



Moab District
82 East Dogwood
Moab, Utah 84532

3802
(UT-060)

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Certified No. Z 160 737 274

Mr. Ron Pene
Pene Mining
P. O. Box 4017
Grand Junction, Colorado 81502

JUL 1 1997

Re: Notice of Noncompliance with Approved Plan of Operations

Dear Mr. Pene:

On February 22, 1996, the Moab District Office received from you a letter transmitting a Plan of Operations for mining claims located within the Westwater Wilderness Study Area (WSA). Under the "Proposed Operations" section of the Plan you proposed conducting surface disturbing activity using mechanized equipment, specifically a "...small one yard bucket rubber tired front end loader..No bulldozer, backhoe or tracked mechanized earth moving equipment will be used." The period of operation stated in the plan was from February 16, 1996 to December 31, 1996.

By letter dated March 15, 1996, the Moab District Manager informed you that Bureau of Land Management (BLM) would be unable to act on your Plan because doing so would require BLM to take action on issues which were at that time under review by the Interior Board of Land Appeals (IBLA). That appeal, IBLA 93-229 was eventually decided on April 9, 1996.

On May 20, 1996, the Moab District Office received from you a document entitled "Supplemental Plan of Operations" as a supplement to the Plan of Operations received on February 22. In this submittal under the "Proposed Operations" you state that "1. All mining activities will consist of removing minerals, mineral samples and specimens using hand equipment such as picks, shovels, buckets and wheelbarrow." You further state under item 2, "The operation of a maximum of two 4 wheel drive pickups will be used to access the mining claims, and will be strictly confined to existing roads. No road improvements will be done." The period of operation stated in the plan was from February 16 to "ongoing".

No where in the supplement is there an indication that the "Proposed Operations" in the supplement are "in addition to" the "Proposed Operations" in the original submission. The two sets of "Proposed Actions" are mutually exclusive. As such, BLM considers the Proposed Operations and the period of operation of the Supplemental Plan as a replacement to those originally proposed. Therefore BLM analyzed the more recent of the two and issued an approval

on June 4, 1996, only to conduct operations as described in the May 20 Supplement.

We believe this was your understanding as well or you would not have submitted another Supplemental Plan of Operations, dated July 15, 1996, which proposed essentially the same operations as contained in the original plan received February 22, 1996. As you will recall, by letter dated September 12, 1996, the BLM disapproved that supplemental plan because the proposed operations would impair the WSA. Our records do not indicate that you filed an appeal of this decision.

On March 21, 1997, during a routine field trip, Bill Stringer, an employee of the Moab District Office, observed what appeared to be new surface disturbance on a portion of the Pussycat No. 2 placer mining claim. Mr. Stringer observed this apparent disturbance from a point above and across the Colorado River a quarter of a mile or more from the site.

On March 24, 1997, Bill Stringer and another employee, Del Backus, went onto the Pussycat placer and Kelli Jo lode mining claims. While on the claims, these employees encountered three men conducting unauthorized surface disturbing activities using mechanized earth moving equipment on the Pussycat No. 2 placer mining claim. The three men present identified themselves as Blaine Rup, Kim Peterson and Keith Roberts and claimed the operations were proceeding with your full knowledge and consent.

Stringer and Backus informed the three individuals that the operations they were conducting were unauthorized and requested that operations cease immediately. The individual who had identified himself as Blaine Rup responded by saying he had been told by you to expect employees of the BLM on the claims and to be courteous to such employees but not to cease operations.

At this point Stringer and Backus began taking photographs and notes documenting the nature and amount of disturbance which was occurring and what had already occurred. Further inspection of the claim group revealed that additional surface disturbance had occurred on the Pussycat No. 3/Kelli Jo No. 1, Pussycat No. 3/Kelli Jo No. 2 and the Pussycat No. 3/Kelli Jo No. 3 mining claims. When Stringer and Backus left the claim group operations were still being conducted.

On March 25, 1997, during a meeting in this office between yourself, your attorney Tom Bachtell and BLM personnel on a related but different matter, you agreed to halt operations on the claim group immediately and remove the unauthorized equipment. Despite this commitment, operations continued on the claim group and were documented through March 30, 1997.

By telephone call to Bill Stringer on April 1, 1997, you stated that you had difficulty contacting the individuals on the claim group but had finally done so and operations were halted. Due to a series of heavy spring rain and snow storms you indicated it would be several days before the equipment could be moved.

On April 1, 1997, the BLM, represented by the United States Attorney, District of Utah, after consultation with your attorney began developing a written Stipulation which would maintain the status quo on the claim group pending resolution of the issues involved. The stipulation would restrict your activities on the claim group to that approved by BLM in the letter of June 4, 1996. This Stipulation has been finalized and signed by BLM on June 18, 1997.

On April 15, 1997, a group of BLM employees inspected the claim group to ascertain the extent of the disturbance on the claim group. A report documenting their findings was prepared for the file.

A follow-up inspection of the claim group was conducted on June 11, 1997. Notwithstanding the April 1, 1997 discussions between your attorney and the U.S. Attorney's Office additional surface disturbance was detected at various locations on the claim group. You told Mr. Stringer that you believed that the northeast corner of the Pusycat No. 6 placer mining claim was located outside of the Westwater WSA and therefore you were operating under the provisions of a Mining Notice as specified at 43 CFR 3809.1-3. Specifically, you made reference to your letter received by BLM on February 22, 1996, wherein you said you were filing "a plan of operations pursuant to 43 CFR subparts 3802 and 3809".

As stated above, BLM did not act on the plan you have referenced. Before action was taken, you filed a supplement which did not reference subpart 3809. BLM does not have a record of having received notification to conduct notice level activity on the claim group.

During the June 11 inspection it was discovered that a road drag and a John Deere tractor, model 555 C, with front end loader and backhoe attachments are being stored on the Pusycat No. 4 placer mining claim, well within the WSA boundary. Storage of this equipment on the mining claims without authorization is not in accordance with the approved plan of operations and is a violation of the regulations for Use and Occupancy under the mining laws, 43 CFR Part 3710.

Based on documentation obtained by the inspections of March 24, April 15 and June 11, 1997, BLM has determined that your past and current activities are in noncompliance with your approved plan of operations, specifically for the reasons listed below:

1. Use of mechanized equipment both on and off of existing roads and trails;
2. Construction of a road segment;
3. Construction of a water impoundment;
4. Excavation of material using mechanized equipment and resulting in substantially noticeable disturbance;
5. Conducting operations without a notice or plan under 43 CFR 3809;
6. Storage of personal property on a mining claim without authorization;
7. Impairment of the Westwater WSA

In order to correct the noncompliance, you must, within 5 days of receipt of this letter:

1. Remove the Ford tractor and road drag from the claim group.
2. Halt the use of mechanized earth moving equipment on the claim group.

If you wish to store this equipment on the claims and conduct Notice-level operations you must submit the materials required by Sec. 3715.3-2 together with the materials submitted under 43 CFR 3809.1-3 for BLM review concurrently with its review of the proposed activity.

In addition, you must, within 30 days of receipt of this letter, submit a plan for reclaiming the disturbances created by you or your associates during the period beginning on or around March

20, 1997, through June 11, 1997. The plan must address:

1. How you will re-establish the original contours, including placement of topsoil, fines and oversize material to ensure slope stability and revegetation success.
2. What type of equipment will be needed and how will it be used.
3. A schedule for completion which allows for reseeding to take place not later than November 1, 1997.

Because disturbance took place in several different soil types, the seed mixture will be different for the different areas. BLM will provide you the seed mix as a part of approval of the reclamation plan.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions or require clarification of information contained in this letter or the enclosures, call Bill Stringer at (801) 259-2185.

Sincerely,

/s/ Katherine Kitchell
District Manager

Enclosure:
Form 1842-1, (1 pp)

cc: Bruce Hill
Regional Solicitor, Intermountain Region
6201 Federal Building
125 South State Street
Salt Lake City, Utah 84138-1180

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